

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

3D SYSTEMS, INC.,	:	
	:	Civil Action No. 0:12-cv-03323-TLW
Plaintiff,	:	
v.	:	
	:	
FORMLABS, INC. and KICKSTARTER, INC.,	:	
	:	
Defendants.	:	x

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**FIRST AMENDED COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF AND DAMAGES**

Plaintiff 3D Systems, Inc., by its first amended complaint of patent infringement against defendants Formlabs, Inc. and Kickstarter, Inc., alleges and avers as follows:

**PARTIES**

1. Plaintiff 3D Systems, Inc., ("3D Systems") is a California corporation having a place of business at 333 Three D Systems Circle, Rock Hill, South Carolina 29730.
2. Upon information and belief, defendant Formlabs, Inc. ("Formlabs") is a Massachusetts corporation having a place of business at 288 Norfolk Street, Suite 4, Cambridge, Massachusetts 02139.
3. Upon information and belief, defendant Kickstarter, Inc. ("Kickstarter") is a Delaware corporation having a place of business at 155 Rivington Street, 2nd Floor, New York, New York 10002.

## **JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1332, 1338(a), 2201, and 2202.

5. This Court has personal jurisdiction over Formlabs and Kickstarter by virtue of at least Formlabs' and Kickstarter's website sales activities of regularly soliciting and conducting sales activities within South Carolina and this judicial district and by virtue of Formlabs and Kickstarter having committed acts of infringement in this judicial district. In addition, as of the filing of this action, according to information gleaned from the website www.kickstarter.com, Kickstarter had started and completed at least 157 fund-raising projects in at least 12 cities in South Carolina (Rock Hill, Columbia, Charleston, Greenville, Spartanburg, Clemson, Myrtle Beach, Florence, Hilton Head Island, Lexington, Simpsonville, and Anderson), having attracted pledges in the cumulative amount of approximately \$840,621 from approximately 12,274 backers.

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

## **BACKGROUND FACTS**

7. 3D Systems is a global company that has developed technology in additive manufacturing which it has incorporated into systems, sold in the United States and abroad, for generating three-dimensional prototypes and commercial products from digital designs. Certain of these systems create physical three-dimensional objects from a liquid medium involving the application of solid imaging techniques, including stereolithographic techniques. To protect 3D

Systems' technology, 3D Systems has applied for and obtained numerous patents in the United States and abroad.

8. Upon information and belief, Formlabs is in the business of manufacturing and selling systems used for creating physical three-dimensional objects from digital designs using solid imaging techniques, including stereolithographic techniques. These products are marketed within the United States and within the jurisdiction of this Court, under the name "The Form 1 High Resolution Desktop 3D Printer" (the "Form 1 3D printer").

9. Formlabs' website, <http://formlabs.com>, promotes the Form 1 3D printer as follows: "The Form 1 marries high-end stereolithography (SL) technology and a seamless user experience at a price affordable to the professional designer, engineer and maker."

10. Upon information and belief, Kickstarter is a funds raiser and selling agent of Formlabs and has offered for sale and sold Form 1 3D printers within the United States and within the jurisdiction of this Court via its website: <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>. Kickstarter's direct involvement in the offering for sale and sale of the Form 1 3D printer is confirmed on <http://www.chipchick.com/2012/11/crowdfrauding-kickstarter.html>, explaining how Kickstarter worked closely with Formlabs (a Formlabs engineer stated that "Kickstarter and their staff were very helpful. They went over what we were putting up. Made sure we were being clear what we were offering and what the risks were. Overall they gave us useful advice and helped make our launch go very smoothly.").

11. Upon information and belief, on or about September 26, 2012, Formlabs launched a sales campaign with Kickstarter with a goal of raising \$100,000. Upon information and belief, when this sales campaign ended on October 26, 2012, Formlabs had been pledged \$2,945,885 by

2,068 backers. Upon information and belief, the backers pledged from as little as \$5.00 for an .STL file to as much as \$10,000 for a Form 1 3D printer.

12. Upon information and belief, the majority of the funds for Formlabs were raised by Formlabs' and Kickstarter's sales of 1,028 Form 1 3D printers to be delivered from February 2013 to April 2013. The Form 1 3D printers were initially sold at \$2,299 and the prices were increased to \$2,999.

13. According to the terms of Kickstarter and as stated in the Kickstarter FAQs: "Every project creator sets their project's funding goal and deadline. If people like the project, they can pledge money to make it happen. If the project succeeds in reaching its funding goal, all backers' credit cards are charged when time expires. If the project falls short, no one is charged. Funding on Kickstarter is all-or-nothing."

14. Therefore, upon information and belief, in Kickstarter's case, all 2,068 backers were charged their respective amounts on October 26, 2012, through web pages prominently featuring the KICKSTARTER and AMAZON logos, and 90-92% of that money was then made available to Formlabs, 5% of that money was made available to Kickstarter, and the 3%-5% fees for credit card processing were made available to Amazon Payments. Upon information and belief, Kickstarter requires all creators, such as Formlabs, "to fulfill all rewards of their project or refund any backer whose reward they do not or cannot fulfill."

15. That Formlabs and Kickstarter had consummated sales of the Form 1 3D printer as of October 26, 2012, is demonstrated by, among other things, Formlabs' September 26, 2012 press release embedded in <http://www.engadget.com/2012/09/26/form-1-delivers-high-end-3d-printing-for-an-affordable-price/>, which stated: "Formlabs is pre-selling the full printer, software, and accessories package at a discount on Kickstarter for as little as \$2,299 for those who order

first." It is further demonstrated by an answer to a Frequently Asked Question on <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>, where the question "How much will the print material (resin) cost?" was answered with statements that included "Kickstarter supporters who buy a Form 1 print package . . ." and ". . . We are not offering resin for sale over Kickstarter above the 1 liter included with Form 1 purchases. . ." Accordingly, the Kickstarter backers were clearly buying/purchasing the Form 1 from Formlabs through Kickstarter. The fact that purchasers of the Form 1 3D printer would be separately and subsequently billed for shipping is explained in <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>: "shipping prices vary by location and country."

16. Accordingly, upon information and belief, Kickstarter and Formlabs have sold 1,028 Form 1 3D printers to the respective backers and customers even though deliveries are not scheduled to begin until February 2013.

17. Furthermore, upon information and belief, the Terms of Use of Kickstarter include a term that companies such as Formlabs will not submit content that infringes any patent.

18. Upon information and belief, Formlabs and its sales agent Kickstarter knew or should have known about, or were willfully blind to, 3D Systems' extensive patent rights in the area of three-dimensional printing and stereolithography, including but not limited to 3D Systems' U.S. Patent No. 5,597,520 covering improved methods of stereolithographically forming a three-dimensional object by forming cross-sectional layers of an object from a material capable of physical transformation upon exposure to synergistic stimulation, by virtue of their sales of machines touted by Formlabs as using "stereolithography (SL) technology,"

which is a technology invented and extensively patented by 3D Systems and its founder Charles Hull.

19. This action relates to the defendants' infringement and threatened infringement of at least one of 3D Systems' United States patents covering various three-dimensional solid imaging products and methods for creating physical three-dimensional models of an object using solid imaging techniques.

#### **PATENT AT ISSUE**

20. On January 28, 1997, the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,597,520 by Smalley, Vorgitch, Manners, Hull, and VanDorin ("the '520 Patent") for an invention entitled "Simultaneous Multiple Layer Curing In Stereolithography." A copy of the '520 Patent is attached hereto as Exhibit A.

21. 3D Systems is the owner of the entire right, title, and interest in and to the '520 Patent as evidenced by an assignment recorded with the U.S. Patent and Trademark Office on July 11, 1994.

#### **FIRST CLAIM FOR RELIEF**

##### **Formlabs' Infringement Of The '520 Patent**

22. 3D Systems realleges and incorporates herein the foregoing allegations in paragraphs 1-21 as if set forth in their entirety.

23. Upon information and belief, based on, among other things, information provided on <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>, <http://www.engadget.com/2012/10/19/formlabs-form-1-eyes-on/> and <http://www.youtube.com/watch?v=YzpVtkwkxMc>, Formlabs' Form 1 3D printer is an apparatus for stereolithographically forming a three-dimensional object by forming cross-sectional layers of said object from a material capable of physical transformation upon exposure to synergistic

stimulation comprising means for receiving data descriptive of said cross-sectional layers and means for forming the cross-sectional layers by selectively exposing the material to the synergistic stimulation according to the data descriptive of the cross-sectional layers to build up the three-dimensional object layer-by-layer, and in particular an apparatus that infringes one or more claims of the '520 Patent.

24. Upon information and belief, based on, among other things, information provided on <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>, <http://www.engadget.com/2012/10/19/formlabs-form-1-eyes-on/> and <http://www.youtube.com/watch?v=YzpVtkwkxMc>, Formlabs' Form 1 3D printer is used for a process of stereolithographically forming a three-dimensional object by forming cross-sectional layers of the object from a material capable of physical transformation upon exposure to synergistic stimulation, including the steps of receiving data descriptive of cross-sectional layers, forming cross-sectional layers by selectively exposing the material to the synergistic stimulation according to data descriptive of the cross-sectional layers to build up the three-dimensional object layer by layer, and in particular in a process that infringes one or more claims of the '520 Patent.

25. Upon information and belief, as of the filing of this action, Formlabs had made, used, offered to sell and sold its Form 1 3D printers in the United States, and had offered to sell and sold same within this judicial district, that directly infringe at least claims 1, 22, 23, 24, and 27 of the '520 Patent, which infringement is ongoing. For example, upon information and belief, Formlabs' own demonstrations and uses of its Form 1 3D printers practice the claimed steps of at least claims 1, 22, and 23 of the '520 Patent. Formlabs' manufacture, use, offers for sale, and sales of its Form 1 3D printer in the United States have infringed and are infringing at

least claims 24 and 27 of the '520 Patent. Thus, Formlabs directly infringes the '520 Patent under 35 U.S.C. § 271(a).

26. Upon information and belief, at all pertinent times, Formlabs had specific intent to infringe the '520 Patent by virtue of its actual knowledge of the '520 Patent and/or at least its willful blindness to the existence of the unexpired '520 Patent, which it knew of or should have known existed by virtue of its making, using, selling and offering for sale a 3D printer that, based on, among other things, <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>, <http://www.engadget.com/2012/10/19/formlabs-form-1-eyes-on/> and <http://www.youtube.com/watch?v=YzpVtkwkxMc>, included means for delaying the forming of a first cross-sectional layer to enhance proper placement of object features, in the same manner that 3D Systems' patented stereolithography apparatus delay curing.

27. Upon information and belief, at all pertinent times, Formlabs had specific intent to infringe the '520 Patent by virtue of its actual knowledge of the '520 Patent and/or at least its willful blindness to the existence of the unexpired '520 Patent, which it knew of or should have known existed by virtue of its making, using, selling and offering for sale a 3D printer using specific stereolithography curing technology that can, based on, among other things, <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>, <http://www.engadget.com/2012/10/19/formlabs-form-1-eyes-on/> and <http://www.youtube.com/watch?v=YzpVtkwkxMc>, produce parts by delaying the curing of at least portions of some cross-sections until subsequent layers are formed and when sufficient exposure can be applied to achieve the desired depth of cure, in the same manner that 3D Systems' patented stereolithography curing methods delay curing.

28. Upon information and belief, at all pertinent times, Formlabs subjectively believed that there was high probability that there was a patent of 3D Systems that covered its delaying of curing methodology practiced by its Form 1 3D printer and took deliberate acts to avoid learning of this fact by at least evaluating 3D Systems' patent portfolio and finding applicable patents that have expired but willfully blinding itself to 3D Systems' patents that have not expired and specifically relate to delayed curing processes employed by Formlabs' Form 1 3D printer, including 3D Systems' '520 Patent.

29. Upon information and belief, at all pertinent times, to the extent the '520 Patent was not known by Formlabs, Formlabs attempted to deliberately shield itself from learning of the '520 Patent while it was aware of 3D Systems' patented stereolithography machines as demonstrated by many articles on the Internet about Formlabs' release of the Form 1 3D printer as having negative implications for 3D Systems, including <http://www.benzinga.com/analyst-ratings/analyst-color/12/09/2939278/jp-morgan-formlabs-release-could-be-negative-for-3d-syst#ixzz2CghpiVv6> reporting on JP Morgan's published report on 3D Systems that commented on potential negative implications for 3D Systems as a result of Formlabs' new 3D printer.

30. Upon information and belief, at all pertinent times, Formlabs also deliberately shielded itself from learning of 3D Systems' '520 Patent when it knew, as is well known in the industry of converting digital designs into three-dimensional objects, that 3D Systems was the pioneer of stereolithography technology and has a significant patent portfolio covering numerous different aspects of stereolithographic methods and apparatus, including patents like the '520 Patent that cover delaying the curing of at least portions of some cross-sections of an object and that 3D Systems has previously asserted its patents in patent infringement lawsuits against companies that use stereolithography technology that infringe upon 3D Systems' patents.

31. The fact that it is and was at all pertinent times well known in the industry that 3D Systems' patents would apply to Formlabs' Form 1 3D printer is shown from reviews of the Form 1 3D printer that Formlabs knew or should have known about, including a September 27, 2012 review from the website SolidSmack.com, <http://solidsmack.com/cad-design-news/form-1-by-formlabs-launches-on-kickstarter/>, that stated: "Utilizing Stereolithography (yet avoiding the patents, apparently), the Form 1 is capable of high quality 3D prints."

32. Additional evidence that 3D Systems was at all pertinent times well known in the industry as the owner of patents relating to stereolithography is provided in a September 26, 2012 review of the Form 1 3D printer from the website 3D Printing News and Trends, [http://3dprintingreviews.blogspot.com/2012\\_09\\_01\\_archive.html](http://3dprintingreviews.blogspot.com/2012_09_01_archive.html), which stated "Note - Patents in this area are owned by 3D Systems Inc. There is a simplicity and beauty to the technique which could be easy to replicate. Have patents expired? Have FormLabs licensed any required IP, or have they found a new approach which can itself be protected by new patents?"

33. As further evidence of Formlabs' knowledge of, or its willful blindness to, 3D Systems' patents, including the '520 Patent, at all pertinent times, upon information and belief, one of the co-founders of Formlabs, Maxim Lobovsky, stated on September 27, 2012 at <http://techcrunch.com/2012/09/27/3d-printer-form-1-gets-6x-its-100k-funding-goal-on-kickstarter-in-one-day/> that "The second factor [in bringing down the cost of the 3D printer] was the expiration of a few patents, meaning that the team didn't need to pay high licensing fees to get this product to market." Upon information and belief, Mr. Lobovsky is referring to the expiration of a number of pioneering patents owned by 3D Systems that would have covered the Form 1 3D printer if not expired.

34. Upon information and belief, still further evidence of Formlabs' knowledge of, or its willful blindness to, 3D Systems' unexpired patents covering its Form 1 3D printer is from an article indicating Formlabs' awareness of 3D Systems' stereolithography patents, in which Formlabs' Lead Engineer, Ian Ferguson, was asked, "What factors attribute to the lower cost of the printer?" to which he responded, "There are three main factors. First, certain patents have expired relating to the Stereolithography process." <http://solidsmack.com/fabricationbehind-the-design-the-formlabs-form-1-3d-printer/>.

35. The foregoing acts of patent infringement by Formlabs have caused, and unless enjoined by this Court, will continue to cause, immediate and irreparable injury and damage to 3D Systems, and 3D Systems has no adequate remedy at law.

## **SECOND CLAIM FOR RELIEF**

### **Kickstarter's Infringement Of The '520 Patent**

36. 3D Systems realleges and incorporates herein the foregoing allegations in paragraphs 1-35 as if set forth in their entirety.

37. Upon information and belief, Kickstarter has offered to sell and sold Form 1 3D printers in the United States and within the jurisdiction of the Court that directly infringe at least claims 24 and 27 of the '520 Patent under 35 U.S.C. § 271(a), which infringement is ongoing.

38. Upon information and belief, Kickstarter had specific intent to infringe the '520 Patent by virtue of its agency, business and sales arrangement with Formlabs, which had actual knowledge of the '520 Patent and/or was willfully blind to the existence of the '520 Patent as set forth in the allegations above.

39. Indeed, in Kickstarter's own Guidelines as to "Project must fit Kickstarter's categories" at <http://www.kickstarter.com/help/guidelines?ref=footer>, under section 02, under "View Design and Technology requirements," Kickstarter is actively encouraging "hacker and

maker" companies to make 3D printers for Kickstarter to sell, stating: "Not everything that involves design or technology is permitted on Kickstarter. While there is some subjectivity in these rules, we've adopted them to maintain our focus on creative projects: • D.I.Y. We love projects from the hacker and maker communities (weekend experiments, 3D printers, CNC machines) and projects that are open source. Software projects should be run by the developers themselves."

40. The foregoing acts of patent infringement by Kickstarter have caused, and unless enjoined by this Court, will continue to cause, immediate and irreparable injury and damage to 3D Systems, and 3D Systems has no adequate remedy at law.

### **THIRD CLAIM FOR RELIEF**

#### **Declaratory Judgment Of Threatened Infringement**

41. 3D Systems realleges and incorporates herein the foregoing allegations in paragraphs 1-40 as if set forth in their entirety.

42. Irrespective of whether, as of the filing of this action, defendants Formlabs and Kickstarter had made actual offers to sell or sales of the Form 1 3D printers in the United States, or had committed other acts of infringement of the '520 Patent, at the time this action was filed and continuing to this date, defendants Formlabs and Kickstarter had been engaged in substantial activities directed toward making, selling, offering for sale, or using the Form 1 3D printer, or actively inducing others to do so, or contributing to the infringement of others, or otherwise infringing at least claims 1, 22, 23, 34, and 27 of the '520 Patent; had made and are continuing to make more than meaningful preparations to conduct activity constituting an infringement of at last claims 1, 22, 23, 24, and 27 of the '520 Patent; and were threatening and are threatening to continue such acts subsequent to the filing of this action.

43. Upon information and belief, as of the filing of this action, Formlabs and Kickstarter were threatening to actively induce and contribute to the infringement of the '520 Patent under 35 U.S.C. § 271(b) and (c) by offering to sell and selling within the United States its Form 1 3D printer that is specifically constructed to produce three-dimensional objects as explained and demonstrated at the Formlabs website, <http://formlabs.com>, the Kickstarter website, <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>, in accordance with the methods patented in at least claims 1, 22, and 23 of the '520 Patent, and which has no other substantial noninfringing uses.

44. Upon information and belief, as of the filing of this action, Formlabs was threatening to actively induce and contribute to the infringement of the '520 Patent under 35 U.S.C. § 271(c) by offering and selling within the United States its Form 1 3D printer which is an apparatus for use in practicing patented processes of at least claims 1, 22, and 23 of the '520 Patent, constituting a material part of the invention of the '520 Patent, with knowledge, including knowledge obtained from this suit, that the same is especially made or especially adapted for use in an infringement of the '520 Patent, and the Form 1 3D printer is not a staple article or commodity of commerce suitable for substantial noninfringing use, or willful blindness to same.

45. Upon information and belief, as of the filing of this action, Formlabs was threatening to actively induce infringement under 35 U.S.C. § 271(b), which will occur with Formlabs having knowledge of 3D Systems' '520 Patent, including knowledge obtained from this suit, and with the specific intent to encourage infringement by another; namely, Formlabs' and Kickstarter's customers, or with willful blindness as to the '520 Patent and with respect to its activities and Kickstarter's activities described above.

46. Upon information and belief, as of the filing of this action, Kickstarter was threatening to contribute to the infringement of the '520 Patent under 35 U.S.C. § 271(c) by offering to sell and selling within the United States the Form 1 3D printer which is an apparatus for use in practicing patented processes of at least claims 1, 22, and 23 of the '520 Patent, constituting a material part of the invention of the '520 Patent, with knowledge, including knowledge obtained from this suit, that the same is especially made or especially adapted for use in an infringement of the '520 Patent, and the Form 1 3D printer is not a staple article or commodity of commerce suitable for substantial noninfringing use, or willful blindness to same.

47. Upon information and belief, as of the filing of this action, Kickstarter was threatening to actively induce infringement under 35 U.S.C. § 271(b) which will occur with Kickstarter having knowledge of 3D Systems' '520 Patent, including knowledge obtained from this suit, and with the specific intent to encourage infringement by another; namely, Formlabs' and Kickstarter's customers, or with willful blindness as to the '520 Patent and with respect to its activities and Formlabs' activities described above.

48. By virtue of their knowledge of the 3D Systems patent portfolio at the time this suit was filed, defendants had indicated their unwillingness to change the course of their actions and avoid infringement.

49. At the time this action was filed, defendants were already infringing the '520 Patent by making, offering to sell, selling, and using the Form 1 3D printer. Also, by virtue of defendants' announced schedule to ship its Form 1 3D printers from February to April 2013, at the time this suit was filed, defendants were threatening to ship Form 1 3D printer and instructions to as many as 1028 customers, including at least two customers in South Carolina, and thereby actively inducing such customers to infringe the '520 Patent.

50. As a consequence of the foregoing, at the time this suit was filed and continuing to date, 3D Systems had suffered and has suffered injuries in fact; namely, an invasion of a legally protected interest in the exclusive rights associated with its '520 Patent. As of the filing of this action, such interest was concrete, particularized, and imminent, and continues to be so. The foregoing injuries to 3D Systems are directly and causally connected to the actions of defendants Formlabs and Kickstarter; namely, the promotion and publicizing of defendants' Form 1 3D printer, the offers for sale and sales of same, and the announced plan to ship 1028 machines that will also infringe the '520 when used by the customers.

51. By virtue of at least the foregoing, as of the filing of this action and continuing to this date, there has been and is a definite and concrete controversy between 3D Systems on the one hand, and defendants Formlabs and Kickstarter on the other hand, touching the legal relations of the parties that have adverse legal interests in the validity, enforceability, and infringement of the '520 Patent, which controversy has at all times been and is real and substantial, and which admits of specific relief through a decree of a conclusive character; namely, a declaratory judgment of validity, enforceability, and infringement.

52. 3D Systems has no adequate remedy at law.

#### **PRAAYER FOR RELIEF**

WHEREFORE, 3D Systems prays for the following relief and an entry of judgment from this Court:

- A. Holding and declaring that the '520 Patent was duly and legally issued, is valid, and is enforceable;
- B. Holding and declaring that Formlabs and Kickstarter have directly infringed one or more of the claims of the '520 Patent;

C. Holding and declaring that Formlabs and Kickstarter have threatened to actively induce infringement and to contributorily infringe one or more claims of the '520 Patent;

D. Holding that Formlabs and Kickstarter have willfully infringed one or more claims of the '520 Patent;

E. Finding that this action is an "exceptional" case within the meaning of 35 U.S.C. § 285, and awarding 3D Systems its reasonable attorney fees and expenses;

F. Permanently enjoining Formlabs and Kickstarter and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order from committing further acts of infringement;

G. Awarding damages to 3D Systems and trebling such damages under 35 U.S.C. § 284;

H. Awarding costs to 3D Systems; and

I. Such other relief as this Court deems necessary and just.

#### **JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), plaintiff 3D Systems hereby demands a trial by jury on all issues so triable.

Date: March 8, 2013

Respectfully Submitted,

ATTORNEYS FOR PLAINTIFF,

/s/ Steven R. LeBlanc

Steven R. LeBlanc (Fed. ID 7000)

DORITY & MANNING, P.A.

One Liberty Square

55 Beattie Place, Suite 1600

Greenville, SC 29601

srl@dority-manning.com

Tel: (864) 271-1592

Fax: (864) 233-7342

Sidney David  
sdavid@ldlkm.com  
Jonathan A. David  
jdavid@ldlkm.com  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, NJ 07070  
Tel: (908) 654-5000  
Fax: (908) 654-7866